Supreme Court, U.S.
FILED
95 1302 FEB 12 1996
OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

October Term, 1995

CARLOS DÍAZ MATOS,

Petitioner,

v.

THE PEOPLE OF PUERTO RICO,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The Commonwealth Of Puerto Rico

PETITION FOR WRIT OF CERTIORARI

LUIS A. PÉREZ-BONILLA
Attorney for Petitioner
Sociedad para Asistencia Legal de Puerto Rico
División de Apelaciones
(Society for Legal Assistance, Appellate Division)
Apartado 20593
Río Piedras, Puerto Rico 00928
(809) 751-7555 (809) 751-7829

Dated: February 12, 1996

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

45 pp

Questions Presented

Whether a local government may maintain in force for more than four decades a vague and overbroad breach-of-peace statute, that left to the discretion of law enforcement officials, prosecutors and judges to determine that the spoken words "son of a bitch" has became unprotected expression.

Whether a jury instruction framed on the language of such breach-of-peace statute not limited narrowly by construction to fighting words can sustain a guilty verdict.

PARTIES

1. The People of Puerto Rico, plaintiff-appellee in the court below.

2. Carlos Díaz Matos, defendant-appellant in the court below.

Mr. Carlos Díaz Matos was here the convicted person under the questioned breach-of-peace statute. He is an indigent person that the Society for Legal Assistance of Puerto Rico brought legal representation before the Supreme Court of the Commonwealth of Puerto Rico. He was sentenced to pay $250 fine plus the costs or to serve one day in jail for every $5 left unpaid.

TABLE OF CONTENTS

Page

Questions Presented i

Parties ii

Table of Authorities v

Opinions Below 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved ... 1

Statement of the Case 2

Reasons for Granting the Writ 4

I. The Puerto Rico breach-of-peace statute, on its face and on its application, criminalizes a substantial amount of protected speech and conduct, effectively grants police an unconstitutionally repugnant discretion to make arrests selectively 4

A. Such unconstitutional breach-of-peace statute is applied annually at least to five thousands citizens of the United States .. 4

II. This case involves a fundamental question of First Admendment construction which the Puerto Rico Supreme Court has decided in conflict with all decisions of this Court about "fighting words" and abridges the freedom of speech of all persons in the Commonwealth of Puerto Rico 12

Conclusion 20

Appendix I

Puerto Rico Supreme Court Judgment; The People of Puerto Rico v. Carlos Díaz Matos, dated November 10, 1995 – Certified Translation ....App. 1

TABLE OF CONTENTS – Continued

Page

Appendix II

Certificate of Translation of the Puerto Rico Supreme Court Judgment.....App. 13

Appendix III

Notice of Judgment.....App. 15

Appendix IV

Certificate of Translation of the Notice of Judgment.....App. 16-17

TABLE OF AUTHORITIES

Page

CASES

Bachellar v. Maryland, 397 U.S. 564, 25 L. Ed. 2d 570, 90 S. Ct. 1312 (1970) 11, 19

Chaplinsky v. New Hampshire, 315 U.S. 568, 86 L. Ed. 1031, 62 S. Ct. 766 (1942) 7, 14

Coates v. Cincinnati, 402 U.S. 611, 29 L. Ed. 2d 214, 91 S. Ct. 1686 (1971) 10

Cohen v. California, 403 U.S. 15, 29 L. Ed. 2d 284, 91 S. Ct. 1780 (1971) 5, 6

Colten v. Kentucky, 407 U.S. 104, 32 L. Ed. 2d 584, 92 S. Ct. 1953 (1972) 10

Gooding v. Wilson, 405 U.S. 518, 31 L. Ed. 2d 408, 92 S. Ct. 1103 (1972) 6, 7, 12, 14, 15

Grayned v. City of Rockford, 408 U.S. 104, 3 L. Ed. 2d 222, 92 S. Ct. 2294 (1972) 8

Gregory v. Chicago, 394 U.S. 111, 22 L. Ed. 2d 134, 89 S. Ct. 946 (1969) 10

Griffin v. United States, 502 U.S. ___, 116 L. Ed. 2d 371 (1991) 11, 19

Hess v. Indiana, 414 U.S. 105, 38 L. Ed. 2d 303, 94 S. Ct. 326 (1973) 14

Houston v. Hill, 482 U.S. 451, 93 L. Ed. 2d 398, 107 S. Ct. 2502 (1987) 7, 9

Kolender v. Lawson, 461 U.S. 352, 75 L Ed 903, 103 S. Ct. 1855 (1983) 10

Lewis v. City of New Orleans, 415 U.S. 130, 39 L. Ed. 2d 214, 94 S. Ct. 970 (1974) 6, 12, 14, 15

TABLE OF AUTHORITIES – Continued

Page

Negrón v. Orozco Rivera, 113 P.R.R. 921 (1983)..... 16

Papachristou v. City of Jacksonville, 405 U.S. 156, 31 L. Ed. 2d 110, 92 S. Ct. 839 (1972)..... 10

People v. Caro González, 110 P.R.R. 669 (1980) 8, 13, 14, 15, 16

People v. Figueroa Navarro, 104 P.R.R. 1016 (1976) 8

People v. Ortíz González, 111 P.R.R. 503 (1981)..... 16

People v. Pillot, 29 P.R.R. 826 (1921) 20

People v. Ruiz, 29 P.R.R. 68 (1921)..... 20

People v. Ways, 29 P.R.R. 311 (1921) 20

Ramos v. District Court, 73 P.R.R. 399 (1952)..... 8

R. A. V. v. St. Paul, 505 U.S. ___, 120 L. Ed. 2d 305, 112 S. Ct. ___ (1992).....6, 18

Terminiello v. Chicago, 337 U.S. 1, 93 L. Ed. 1131, 69 S. Ct. 894 (1949)..... 6, 11, 17, 19

Smith v. Goguen, 415 U.S. 566, 39 L. Ed. 2d 605, 94 S. Ct. 1242 (1974)..... 10

Vizcarra Castellón v. People, 92 P.R.R. 150 (1965) 20

UNITED STATES CONSTITUTION

First Amendment.....1, 6, 11, 20

Fourteenth Amendment..... 1, 6, 11

STATUTES & RULES

Section 260 (a) of Puerto Rico Penal Code, 33 L.P.R.A. Sec. 4521 ..... *passim*

TABLE OF AUTHORITIES – Continued

Page

MISCELLANEOUS

Diccionario de la Lengua Española, ("Dictionary of the Spanish Language") Real Academia Española, Editorial Espasa-Calpe, Madrid, page. 640 4

A New Pronouncing Dictionary of the Spanish and English Languages, rev. ed, Meredith Publishing Company, New York, 1970, page 106 4

Simon and Schuster's International Dictionary, English-Spanish/Spanish-English, New York, 1973, page 1005 4

L.H. Tribe, The Constitutional Protection of Individual Rights: Limits on Government Authority, The Foundation Press, Inc., New York, 1978, page 718 7

S.W. Gard, Fighting Words As Free Speech, 58 Wash. U.L.Q. 531 (1980) 9, 15

T.F. Shea, "Don't Bother to Smile When You Call Me That" – Fighting Words and The First Amendment, 63 Ky. L.J.1 (1975)..... 10

R. Emmanuelli Jiménez, Análisis Constitutional del Delito de Alteración a la Paz Artículo 260 del Código Penal de Puerto Rico, 55 Rev. Jur. U.P.R. 587 (1986) 10

1989-90 Annual Report of the Judicial Branch of Puerto Rico 10

OPINIONS BELOW

The judgment of the Supreme Court of the Commonwealth of Puerto Rico, not reported, was issued on November 10, 1995. A certified translation of this judgment appears in the Appendix I.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1258. The present petition is being filed within ninety days after the entry of the judgment. The judgment was issued on November 10, 1995 and the day of entry was on November 13, 1995. A Certificate of Translation of the Notice of Judgment appears in the Appendix III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment of the United States Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech,. . . . " A Certificate of Translation of the Notice of Judgment appears in the Appendix III.

Due Process of Law Clause, Fourteenth Amendment of the United States Constitution: "No State shall make or enforce any law which shall abridge privileges or immunities of citizens of the United States; nor shall any State deprive any person of liberty or property, without due process of law. . . . "

Section 260(a) of Puerto Rico Penal Code, Laws of Puerto Rico Annotated, 33 L.P.R.A. Sec. 4521 provides: "It

shall be punishable by imprisonment not exceeding six (6) months or a fine not exceeding five hundred dollars, or both, in the discretion of the Court for any person who wilfully performs any of the following acts: (a) disturbs the peace or quiet of any individual or neighborhood, by loud and unusual noises, tumultuous or offensive conduct, or threats, insults, fights, challenges or provocations. . . . "

STATEMENT OF THE CASE

Appellant and petitioner Carlos Díaz Matos was processed in the Superior Court of Puerto Rico, San Juan Part, of violating Section 2.8 of the Domestic Violence Act, *Laws of Puerto Rico Annotated*, Volume 8, Section 628, for use of violence and intimidation against public authority, aggravated battery and for breach of the peace. The events took place on August 17, 1991, at the Hato Rey East Police Station.

Petitioner was submitted to a jury trial. But the trial judge peremptorily acquitted him of the offenses of violence and intimidation against public authority and aggravated battery. The jury found him guilty of breach of the peace. On April 27, 1993, Díaz Matos was sentenced to pay a $250 fine plus the costs or to serve one day in jail for every $5 left unpaid.

At trial, the following witnesses testified for the prosecution: Raquel Rosado Osorio, the defendant's ex-wife; the injured party, police officer Juan Rosa Rodríguez; and sergeant Rafael Díaz, who investigated the complaint.

Police officer Rosa Rodríguez testified that on the day of the events, he was working the 6:00 p.m. to 2:00 a.m. shift. He stated that at 2:00 a.m., he was at the Investigations Division of the Judicial Center in Hato Rey filing another case when a lady arrived and asked him for help stating that her husband was upsetting her. At this moment, the defendant arrived and asked officer Rosa to help him. Rosa stated that he then cited for that same day during the evening at the Hato Rey East Police Station.

As soon as he arrived to the above-mentioned police station, he noticed that petitioner Díaz Matos had also arrived there. Petitioner told Rosa that he was going to report him to the on-duty sergeant. Immediately, Rosa prepared an official citation and asked the defendant to sign it; the latter refused, turned around, and headed for the station door. Rosa followed him with the intention of handing him the citation, when Díaz Matos "turned around, grabbed and crumpled the citation, and called him "son of a bitch" (the word he used in Spanish was *cabrón*, that may be translated as male goat, cuckold or bastard) and then slapped him in the face. Police officer Rosa added that he felt offended by this word because he is a married man. Then, Díaz Matos, was arrested. At the end of the trial, the jury found Carlos Díaz Matos guilty of breach of the peace.

Petitioner then appealed the guilty jury verdict, and the Puerto Rico Supreme Court affirmed the sentence from the Superior Court, San Juan part. And now we present this petition for writ of certiorari.

REASONS FOR GRANTING THE WRIT

I. The Puerto Rico breach-of-peace statute, on its face and on its application, criminalizes a substantial amount of protected speech and conduct, effectively grants police an unconstitutionally repugnant discretion to make arrests selectively.

A. Such unconstitutional breach-of-peace statute is applied annually at least to five thousand citizens of the United States.

In this instant case the petitioner was arrested, processed and convicted because he told, in a verbal dispute, to a policeman, "you are a son of a bitch." The word that petitioner used in Spanish was *"cabrón"*, which in spanish this word has at least six different meanings.[1] This one could mean, for example, male goat, cuckold, bastard, bugger or pimp.[2]

Because the police officer believed that this word was prohibited, he arrested the petitioner for wilfully using opprobrious language or insults in violation of Section

---

[1] See *Diccionario de la Lengua Española*, ("Dictionary of the Spanish Language") Real Academia Española, Editorial Espasa-Calpe, Madrid, page 640.

[2] *Simon and Schuster's International Dictionary*, English-Spanish/Spanish-English, New York, 1973, page 1005. See also *A New Pronouncing Dictionary of the Spanish and English Languages*, rev. ed., Meredith Publishing Company, New York, 1970, page 106; the word *"cabrón"*, means here, buck, he-goat, or one who consents to the adultery of his wife.

260(a) of Puerto Rico Penal Code. The language of the statute provides:[3]

> It shall be punishable by imprisonment not exceeding six (6) months or a fine not exceeding five hundred dollars, or both, in the discretion of the Court for any person who wilfully performs any of the following acts:
>
> (a) disturbs the peace or quiet of any individual or neighborhood, by loud and unusual noises, tumultuous or offensive conduct, or threats, insults, fights, challenges or provocations.

---

[3] The full text of the Section 260 provides: "It shall be punishable by imprisonment not exceeding six (6) months or a fine not exceeding five hundred dollars, or both, in the discretion of the Court for any person who wilfully performs any of the following acts: (a) disturbs the peace or quiet of any individual or neighborhood, by loud and unusual noises, tumultuous or offensive conduct, or threats, insults, fights, challenges or provocations. (b) On any public street or throughfare fires any gun or pistol, or without it being a case of self-defense, draws or exhibits any deadly weapon in the presence of two or more persons, in a violent, rude or threatening attitude or unlawfully makes use of said weapon in a fight or quarrel. (c) Uses vulgar, profane or indecent language in the presence or within the hearing of women or children in a loud or noisy manner."

In *Cohen v. California*, 403 U.S. 15, 16, 29 L. Ed. 2d 284, 288, 91 S. Ct. 1780 (1971) a similar breach-of-peace statute was declared unconstitutional by this court. It was Section 415 of the California Penal Code, insofar as it is pertinent, provides: "Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood or person, by loud or unusual noise or by tumultuous or offensive conduct, or threatening traducing, quarreling, challenging to fight, or fighting, . . . , is guilty of misdemeanor . . . "

This statute is, on its face, unconstitutionally overbroad. **In the first place,** their terms not only seek to regulate spoken words (insults or insulting language or opprobrious language, and so on), but also conduct. And this Court has established repeatedly that not only pure speech is protected by the First and Fourteenth Amendments, but also vulgar and offensive speech. *Lewis v. City of New Orleans,* 415 U.S. 130, 134; 39 L. Ed. 2d 214, 219; 94 S. Ct. 970 (1974); *Gooding v. Wilson,* 405 U.S. 518, 522; 31 L. Ed. 2d 408, 414; 92 S. Ct. 1103 (1972); *Cohen v. California,* 403 U.S. 15; 29 L. Ed. 2d 284; 91 S. Ct. 1780 (1971); *Terminiello v. Chicago,* 337 U.S. 1, 4-5; 93 L. Ed. 1131; 69 S. Ct. 894 (1949). In *R. A. V. v. St. Paul,* 505 U.S. ___, 120 L. Ed. 2d 305, 317; 112 S. Ct. ___ (1992), this Court held:

> The First Amendment generally prevents government from proscribing speech, . . . , or even expresssive conduct, . . . , because of disapproval of the ideas expressed. Content-based regulations are presumptively invalid. . . . From 1791 to the present, however, our society, like other free civilized societies, has permitted restrictions upon the content of speech in a few limited areas, which are 'of such slight social value as a step to truth that may be derived from them is clearly outweighed by the social interest in order and morality.' . . . We have recognized that 'the freedom of speech' referred to by the First Amendment does not include a freedom to disregard these traditional limitations. . . . (obscenity); . . . (defamation); . . . ("fighting words"); . . .

Secondly, Section 260(a) of Puerto Rico Penal Code that punished spoken words, has the unconstitutional defect that "was not limited in scope to fighting words

that 'by their very utterance inflict injury or tend to incite an immediate breach of the peace' ". *Houston v. Hill*, 482 U.S. 451, 461-462; 93 L. Ed. 2d 398, 412; 107 S. Ct. 2502 (1987); *Gooding v. Wilson*, supra, at 525; *Chaplinsky v. New Hampshire*, 315 U.S. 568; 86 L. Ed. 1031; 62 S. Ct. 766 (1942).

In the same line, the questioned statute is, on its face, unconstitutionally vague. About the vagueness doctrine it has been said:[4]

> Vagueness is a constitutional vice conceptually distinct from overbreadth in that an overbroad law need lack neither clarity nor precision, and a vague law need not reach activity protected by the first amendment. As a matter of due process, a law is void on its face if it is so vague that persons 'of common intelligence must necessarily guess at its meaning and differ as to its application'. Such vagueness occurs when a legislature states its proscriptions in terms so indefinite that the line between innocent and condemmed conduct becomes a matter of guesswork. This indefiniteness runs afoul of due process concepts which require that persons be given fair notice of what to avoid, and that the discretion of law enforcement officials, with the attendant dangers of arbitrary and discriminatory enforcement, be limited by explicit legislative standards.

Therefore the test to be applied is that a law is void on its face if it is so vague that persons "of common

---

[4] L.H. Tribe, *The Constitutional Protection of Individual Rights: Limits on Government Authority*, The Foundation Press, Inc., New York, 1978, page 718. (citation omitted).

intelligence must necessarily guess at its meaning differ as to its application".[5] In other words, the message that a provision wants to give, it is not clear. This is exactly the problem with Section 260(a). It is not clear, for example, what is "offensive conduct" or "tumultuous conduct" or "traducing" or "loud or unusual noise". In a state case the Puerto Rico Supreme Court concluded that the "act of peeping" constituted a violation of the breach-of-peace statute. *Ramos v. District Court*, 73 P.R.R. 399, 401 (1952).[6] Other case was *People v. Figueroa Navarro*, 104 P.R.R. 1016 (1976), in which the court indicated that "petitioner's behavior stalking the house, parking the vehicle in front of the same, starting insistently, using binoculars and a camera with telephoto lens, and photographing the girls," . . . constituted the offensive conduct proscribed by Section 260(a). Also the Puerto Rico Supreme Court has held that to say: "The police may go to hell, you bastards," is conduct at the core of the breach-of-peace statute. *People v. Caro González*, 110 P.R.R. 669, 670 (1980). However, in that case these words were said to the police by a person from the interior of his house, where "there was no physical contact with the policemen and they could not get into the house and appellant did not leave the same." Id.

---

[5] *Grayned v. City of Rockford*, 408 U.S. 104, 107-108; 3 L. Ed. 2d 222, 227-228; 92 S. Ct. 2294 (1972).

[6] The court was more exigent and held that any " 'offensive' conduct which disturbs the 'peace or quiet' of a neighborhood or person is sufficient to be a breach of peace." *Ramos v. District Court*, supra, at 401.

Another problem with the Puerto Rico breach-of-peace statute is that it confers full discretion to make arrests in a selective way. This was a serious defect that this Court confronted with the Houston's ordinance in *Houston v. Hill*, 482 U.S. 451; 96 L. Ed. 2d 398; 107 S. Ct. 2502, supra. In *Houston*, at 462-463, the Court expressed:

> The Houston ordinance is much more sweeping than the municipal ordinance struck down in Lewis. It is not limited to fighting words nor even to obscene or opprobrious language, but prohibits speech that "in any manner . . . interrupts" an officer. The Constitution does not allow such speech to be made a crime. The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state. (footnotes omitted)

We are of the opinion, that as in *Houston*, Section 260(a) "confers on police a virtually unrestrained power to arrest and charge persons with a violation. Many arrests are made in 'one-on-one' situations where the only witnesses are the arresting officer and the person charged."[7] *Houston v. Hill*, 482 U.S., at 466; 96 L. Ed. 2d at

---

[7] S.W. Gard, *Fighting Words As Free Speech*, 58 Wash. U.L.Q. 531 (1980) ("The reported cases demonstrate that the fighting words doctrine is seldom, if ever, used for its intended purpose. Instead, it is almost uniformly invoked in a selective and discriminatory manner by law enforcement officials to punish trivial violations of a constitutionally impermissible interest in preventing criticism of official conduct. Under these circumstances, it is important to recognize that the doctrine is, at best, a quaint remnant of a bygone morality". At page 580).

415. See also *Kolender v. Lawson*, 461 U.S. 360-361; 75 L. Ed. 2d 903, 910-911; 103 S. Ct. 1855 (1983); *Smith v. Goguen*, 415 U.S. 566, 575; 39 L. Ed. 2d 605, 613; 94 S. Ct. 1242 (1974); *Colten v. Kentucky*, 407 U.S. 104; 32 L. Ed. 2d 584; 92 S. Ct. 1953 (1972); *Papachristou v. City of Jacksonville*, 405 U.S. 156; 31 L. Ed. 2d 110, 92 S. Ct. 839 (1972); *Coates v. Cincinnati*, 402 U.S. 611, 615-616; 29 L. Ed. 2d 214, 218-219; 91 S. Ct. 1686 (1971); *Gregory v. Chicago*, 394 U.S. 111, 120; 22 L. Ed. 2d 134, 141; 89 S. Ct. 946 (1969).

In 1981-82, Puerto Rico police arrested **5,254 persons**[8] for violation of the breach-of-peace statute. And in 1989-90 the figure increased to **9,644 cases**[9] for violating such statute. Therefore we can certainly say that the statute at issue is often applied in the Commonwealth of Puerto Rico.

In conclusion Section 260(a) gathers all the elements necessary to be attacked, on its face: it regulates protected speech and conduct. It is not limited to fighting words; it

---

T.F. Shea, *"Don't Bother to Smile When You Call Me That" – Fighting Words and The First Amendment*, 63 Ky. L.J.1 (1975) ("[A] majority of the United States Supreme Court has gradually concluded that fighting words, no matter how narrowly defined, are a protected form of speech and that as a result a mere rational basis is no longer sufficient to justify legislation". Id., pages 1-2).

[8] R. Emmanuelli Jiménez, *Análisis Constitutional del Delito de Alteración a la Paz Artículo 260 del Código Penal de Puerto Rico*, ("Constitutional Analysis of the Puerto Rico Breach-of-Peace Statute, Section 260 of the Puerto Rico Penal Code") 55 Rev. Jur. U.P.R. 587 (1986).

[9] Figures obtained from *1989-90 Annual Reports of the Judicial Branch of Puerto Rico.*

is an overbroad and vague statute; and it delegates too much discretion to law enforcement officials, policemen, prosecutors and judges as for what constitutes breach of peace.

The Puerto Rico Supreme Court refuses the consideration of these important federal questions of First Amendment, solely because they were not raised at trial. We believe that the court should have considered these issues of overbreadth and vagueness and also the question of the unconstitutionality of the jury instruction, that were presented for the first time on appeal. The "rule of the Stromberg case", was applicable to this one. So a person may challenge a general-verdict conviction on the ground of unconstitutionality, whether or not was raised at trial. *Griffin v. United States*, 502 U.S. ___; 116 L. Ed. 2d 371, 380 (1991); *Bachellar v. Maryland*, 397 U.S. 564, 569, 570-571, 25 L. Ed. 2d 570, 90 S. Ct. 1312 (1970); *Terminiello v. Chicago*, 377 U.S. 1, 5; 93 L. Ed. 1131; 69 S. Ct. 894 (1949).

On page 9 of its *Judgment* of November 10, 1995, App. 10, the Puerto Rico Supreme Court held, about the error of the constitutionality of the jury instructions, that this assignment of error lacked merit and is untenable. We believe respectfully, that petitioner raised a very important issue of abridgement of fundamental rights under the First and Fourteenth Amendments, to the United States Constitution as well as issues under the Constitution of the Commonwealth of Puerto Rico and the court should have considered them. This is ever more true because petitioner was attacking such Section 260(a) because of overbreadth and vagueness. And "the transcendent value to all society of constitutionally protected expression is justified allowing 'attacks on overly broad

statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the narrow specificity.' " *Lewis v. City of New Orleans*, 415 U.S. 130, 133-134; 39 L. Ed. 2d 214, 219; 94 S. Ct. 970 (1974); *Gooding v. Wilson*, 405 U.S. 518, 521; 31 L. Ed. 2d 408, 413; 92 S. Ct. 1103, supra.

II. This case involves a fundamental question of First Admendment construction which the Puerto Rico Supreme Court has decided in conflict with all decisions of this Court about "fighting words" and abridges the freedom of speech of all persons in the Commonwealth of Puerto Rico.

Section 260(a) of Puerto Rico Penal Code, as construed by the local Supreme Court, is still unconstitutional, vague and overbroad. Although the court had the opportunity to narrowly limit the breach-of-peace statute to fighting words, those which by their very utterance tend to incite an inmediate breach of peace, the court did not do so. This Court has repeatedly held that when a state Supreme Court confronts similar statutes, construction must be limited to the same words that 'have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed.' And in *Gooding v. Wilson*, supra, at 522; 31 L. Ed. 2d 408, 414; it was stated that breach-of-peace " . . . statute must be carefully drawn or be authoritatively construed to punish only unprotected speech and not susceptible of application to protected expression. 'Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.' "

The Puerto Rico Supreme Court had the opportunity to narrowly limit such Section 260(a) to an acceptable constitutional construction in the leading case of *People v. Caro González*, 110 P.R.R. 669 (1980), but the court failed to do so. The court established that "the police is entitled to the same protection given to other persons." Id., at page 680. The court added, at page 681:

> In the face of this dilemma, we resolved that the application of modality (a) of art. 260 of the Penal Code, exactly as it has been construed, is not totally excluded when the subject is a policeman. However, among all the circumstances which should be considered for the crucial determination of whether the words constitute "fighting words", attention must be paid to the fact that one should always expect that a policeman exercise a greater degree of control over his emotions, showing a high degree of tolerance when faced with possible insults that may be addressed to him in diverse situations.

So the holding of the case, *People v. Caro González*, supra; was merely that a police officer is entitled to a same legal protection as any other citizen from public insults. Puerto Rico Supreme Court concluded that the words said by defendant Caro González qualified as fighting words. It was stated: "The words uttered within the meaning attibuted to them by the general idiosyncracy of our people, are by their own nature, rather than annoying, offensive, and irritating, capable of provoking a violent reaction (fighting) and consequently a breach of peace. Only the policeman's self-control prevented that the insults degenerated into a violent situation." *People v. Caro González*, supra, at page 682. We differ

of this analysis. **First,** the court is saying *a priori* that said words ("The police may go to hell, you bastards.") are fighting words without taking in account the facts[10] and the precedent cases of this Court. The expression ("you son of a bitch, I'll choke you to death.") in *Gooding v. Wilson,* 405 U.S., supra, or in *Lewis v. City of New Orleans* (you god damn m. f. police), 415 U.S., supra, or in *Hess v. Indiana,* 414 U.S. 105, 107; 38 L. Ed. 2d 303, 306; 94 S. Ct. 326 (1973), ("[w]e'll take the fucking street later, or [w]e'll take the fucking street again . . . "), we believe are stronger than those in *Caro González.*[11] **And second** but more importantly Puerto Rico Supreme Court[12] did not refine or narrowly limit Section 260(a) of the Puerto Rico Penal Code to "those words which by their very utterance inflict injury or tend to incite an immediate breach of

---

[10] Examining those facts, appear that the police officer had 19 years of service, there was no physical contact with the policemen, they could not get into the house and appellant did not leave the same. *People v. Caro González,* supra, at 670.

[11] It seem to be that in *González Caro,* the court forgot that there was a police officer involved. And this is a big difference. Justice Powell noted in Lewis I: "If these words had been addressed by one citizen to another, face to face and in a hostile manner, I would have no doubt that they would be 'fighting words'. But the situation may be different where such words are addressed to a police officer trained to exercise a higher degree of restraint than the average citizen". *Lewis v. City of New Orleans,* No. 79-5323; 408 U.S. 913 L. Ed. 2d 321; 92 S. Ct. 2499 (1972).

[12] It is interesting that in the case of *Caro González,* supra, at 676-677, were cited important cases of this Court, such as, *Gooding, Lewis, Chaplinsky and Rosenfeld,* but the court did not limited authoratatively the language of Section 260(a) to fighting words.

peace." *Lewis v. City of New Orleans*, 415 U.S., supra, at 132; 39 L. Ed. 2d 218, *Gooding v. Wilson*, 405 U.S., supra, at 522; 31 L. Ed. 2d 408.

In the instant case, as in *Caro González*, the Supreme Court of the Commonwealth of Puerto Rico, classified the language used by the defendant petitioner Díaz Matos as "fighting words", without applying the "fighting words doctrine of today."[13] This doctrine is a four step test established by this Court through all of its decisions to determine whether or not an expression constitutes "fighting words".[14] The "four elements must be present before the doctrine will deprive a message of constitutional protection".[15] These elements are:[16]

> First, the utterance must constitute an extremely provocative personal insult [or a personally abusive epithet],[17] a factor requiring a judicial analysis of the content of the expression. Second, the words must have a direct tendency to cause an immediate response by the average recipient. Third, the words must be uttered face-to-face to the addressee. Fourth, the utterance must be directed to an individual, not a group.

The court in the instant case did not apply this standard and concluded that the language involved was fighting words. This determination is in conflict with all

---

[13] See S.W. Gard, *Fighting Words As Free Speech*, 58 Wash. U.L.Q. 531 (1980).

[14] Id. at p. 536.

[15] Id.

[16] Id. at p. 550.

[17] Id. at p. 537.

decisions of this Court and also abridges the freedom of speech of all persons of the Commonwealth of Puerto Rico. On the other hand, there are some opinions of the Puerto Rico Supreme Court that are in contradiction with the case at bar and with *Caro González*, supra. The expression used by the petitioner was: "you are a son of a bitch." (or "cuckold" the word in spanish was *"cabrón"*). However, in *People v. Ortíz González*, 111 P.R.R. 503, 513 (1981), the court enunciated:

> The great provocation mentioned by the appellant in his brief to justify the killing of the deceased is that the latter told him: "Look you, cuckold (*cabrón*), you want to rob me of my old lady's inheritance". Appellant argues that "said words said in Puerto Rico to a married man . . . are greatly provocative and it is one of the most serious offenses which can be uttered". (Brief, p. 19.) This is not true. **There are even worse offenses,** and this notwithstanding, does not justify that the aggrieved starts shooting at the loudmouthed.(n1)
>
> ---
>
> (n1) It is interesting to point out that the evidence for the prosecution charges appellant with having called the victim "cuckold" (*cabrón*) in an incident which took place on March 16 and which culminated in the tragedy of the 21st. (emphasis added)

Later in *Negrón v. Orozco Rivera*, 113 P.R.R. 921, 926 (1983), n3, *"cabrón"* was said to a policeman and nothing happened at the moment. Several days later the police officer shot to death the person who called him *"cabrón"*. The incidents related to the shooting were totally

independent from the time that decedent uttered *"cabrón"*. In anyway, we have to distinguish the facts of this case; here the individuals were involved in an active dispute and police officer participant of this facts was not performing any kind of official functions. Therefore, the "fighting words doctrine mandates a sensitive analysis of the circumstances in which the words are uttered, and an appreciation of the distinction between arousal of anger or outrage in the recipient of the language and creation of an uncontrollable reflexive and violent response."[18]

On the other hand, *Terminiello* imposes "requirement that the words must create a likelihood of an immediate, violent, reflexive response by the recipient as a meaningful element of the fighting words doctrine."[19] And, by the same token:

> It is not sufficient that the addressee might feel anger or outrage. Only when the addressee experiences an uncontrollable violent impulse will the fighting words doctrine declare the speech unprotected by the first amendment. In addition, the Court clearly established that it would no longer indulge in the simplistic assumption that certain words inevitably provoke such a reaction. Instead, the likelihood of an immediate violent reaction becomes a factual

---

[18] Id. at 549. Gard, added at 553: "Thus, the question of whether the offending language constitutes unprotected fighting words requires an analysis not only of the words themselves, but also of several other facts 'such as the relation of the parties, the circumstances under which the language was used, and the manner of the speaker' ".

[19] Id.

> inquiry largely dependent on the circumstances surrounding the use of the offensive language.[20]

It is important to say that this Court in the recent case of *R.A.V. v. St. Paul*, 505 U.S. ___, 120 L. Ed. 2d 305, 318-320 (1992), acknowledged that also certain language that could qualify as "fighting words" is protected by the Constitution:

> It is not true that 'fighting words' have at most a 'de minimis' expressive content, ibid., or that their content is *in all respects* 'worthless and undeserving of constitutional protection'. post, at ___, 120 L. Ed. 2d at 330; sometimes they are quite expressive indeed. We have not said that they constitute 'no part of the expression of ideas', but only that they constitute 'no *essential* part of any exposition of ideas'. Chaplinsky, 315 U.S., at 572, 86 L. Ed. 1031, 62 S. Ct. 766 (emphasis added).
>
> The proposition that a particular instance of speech can be proscribable or the basis of one feature (e.g., obscenity) but not on the basis of another (e.g., opposition to the city government) is commonplace, and has found application in many contexts. We have long held, for example, that nonverbal expressive activity can be banned because of the action it entails, but not because of the ideas it expresses – so that burning a flag in violation of an ordinance against outdoor fires could be punishable, whereas burning a flag in violation of an ordinance against dishonoring the flag is not.

---

[20] Id. at 550.

Finally, the conviction of petitioner must be set aside because is based on a clearly wrong jury instruction that was framed on a language of such unconstitutional breach-of-peace statute. And as we said before, the Puerto Rico Supreme Court should have applied to the case here "the rule of the Stromberg case", so a person may challenge a general-verdict conviction on an unconstitutional ground, for the first time on appeal. *Griffin v. United States*, 502 U.S. ___; 116 L. Ed. 2d 371, 380 (1991). See also *Bachellar v. Maryland*, 397 U.S. 564, 569, 570-571, 25 L. Ed. 2d 570, 90 S. Ct. 1312 (1970); *Terminiello v. Chicago*, 377 U.S. 1, 5, 93 L. Ed. 1131, 69 S. Ct. 894 (1949).

The instruction questioned here was the following:

> Another charge made by the prosecution is that of section 260, better known as Breach of the Peace. This section also has three modalities, and of course, the charge made against the defendant relates to one of these modalities, and section 260, which covers this situation, states that: "Breach of the Peace is committed by any person who willfully performs any of the following acts," and three acts are mentioned, but only one is applicable to him, and that is subsection A, and subsection A states the following: "Disturbs the peace or quiet of any individual or neighborhood, by loud and unusual noises, tumultuous or offensive conduct or threats, insults, fights, challenges or provocations". (See App. 11)

When we evaluate this jury instruction, we can see that this one is unconstitutional and fails to conform with the requirement set forth in *Terminello v. Chicago*, 337 U.S. 1, 93 L. Ed. 1131, supra. This instruction gathers only the

unconstitutional language of Section 260(a), nothing more.

CONCLUSION

We have to ask ourself why this Court should issue a Writ of Certiorari to review the judgment that the Puerto Rico Supreme Court issued on the instant case? There are two paramount reasons. First, the unconstitutional Section 260(a) is continuing and consistently been applied to the whole citizens of Puerto Rico creating a serious chilling effect on the freedom of speech over the entire population. And secondly, at least from 1921,[21] the Puerto Rico Supreme Court has not construed Section 260(a) to be applied only to "fighting words", hence consistently prohibited expressions protected by the First Amendment.

Respectfully submitted,

LUIS A. PEREZ-BONILLA
Attorney for Petitioner
Sociedad para Asistencia Legal de Puerto Rico
División de Apelaciones
(Society for Legal Assistance, Apellate Division)
Apartado 20593
Río Piedras, Puerto Rico 00928
(809) 751-7555 (809) 751-7829

---

[21] See *People v. Ways*, 29 P.R.R. 311 (1921); *People v. Ruiz*, 29 P.R.R. 68 (1921); *People v. Pillot*, 29 P.R.R. 826 (1921); *Vizcarra Castellón v. People*, 92 P.R.R. 150 (1965); *People v. Caro González*, 110 P.R.R., supra.

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico, Appellee	Appeal from the Superior Court, San Juan Part
v.	
Carlos Díaz Matos, Defendant and appellant	No. CR-93-109 Breach of the Peace (Sec. 260 P.C.)

JUDGMENT

San Juan, Puerto Rico, November 10, 1995

Appellant Carlos Díaz Matos was accused in the Superior Court of Puerto Rico, San Juan Part, of violating sec. 2.8 of the Domestic Violence Act (Act 54)[1], of breach of the peace[2], use of violence and intimidation against public authority[3], and aggravated battery[4] for events that allegedly took place on August 17, 1991, at the Hato Rey East Police Station.

A jury trial was held. The trial judge peremptorily acquitted the defendant of the Act 54 charge. The jury acquitted him of the offenses of violence and intimidation against public authority and aggravated battery, but found him guilty of breach of the peace. On April 27,

---

[1] Act No. 54 of August 15, 1989 (8 L.P.R.A. § 628).

[2] Puerto Rico Penal Code sec. 260 (33 L.P.R.A. § 4521).

[3] Puerto Rico Penal Code sec. 256 (33 L.P.R.A. § 4491).

[4] Puerto Rico Penal Code sec. 95 (33 L.P.R.A. § 4032).

1993, Díaz Matos was sentenced to pay a $250 fine plus the costs or to serve one day in jail for every $5 left unpaid.

The defendant appealed to this Court essentially alleging that the evidence brought against him was not sufficient at law to establish his guilt beyond a reasonable doubt. In his brief, he also alleged that the breach of the peace statute suffers from serious constitutional problems, and he questioned the instructions given to the jury. The solicitor general also appeared by brief.

After a careful examination of the record and of the parties' briefs – with special attention to the narrative statement – we are of the opinion that the alleged errors were not committed. We affirm the judgment of the trial court.

I

The contentions of unconstitutionality of the statute and of flawed instructions were not raised before the trial court. We must determine, then, if review of these points on appeal for the first time is warranted. However, we will first pass upon the allegation of insufficiency of the evidence, for if the appellant prevails here, subsequent discussion of the remaining two errors will not be necessary.

According to the amended narrative statement, the following witnesses testified for the prosecution: Raquel Rosado Osorio, the defendant's ex-wife; the injured party, police officer Juan Rosa Rodríguez; and sergeant Rafael

Díaz, who investigated the complaint. Insofar as it is pertinent, they expressed the following.

Rosado Osorio testified that following an argument between her oldest daughter and the defendant, she went to the Investigations Division of the Judicial Center in Hato Rey around 1:00 a.m. on August 17, 1991, to file a complaint against her ex-husband. Upon leaving, she ran into officer Rosa. While the police officer was giving her some advice, her ex-husband arrived. Officer Rosa cited them for that same day at 6:00 p.m. She went home, and the defendant remained there with their minor son. At approximately 2:00 a.m., Diaz Matos took his son to her house and left. She stated that the defendant did not use obscene language that night. She further testified that she found out about what had happened between her ex-husband and police officer Rosa when, responding to the citation, she appeared at the Hato Rey east Police Station that day during the evening.

On cross examination, she testified that on the night of the events, the defendant did not enter her house, and it came out that in her sworn statement, she had made no reference to insulting words by the defendant.

Police officer Rosa Rodriguez testified that on the day of the events, he was working the 6:00 p.m. to 2:00 a.m. shift. He stated that at 2:00 a.m., he was at the Investigations Division of the Judicial Center in Hato Rey filing another case when a lady arrived and asked him for help stating that her husband was upsetting her. At this moment, the defendant arrived and asked Rosa to help him. Rosa stated that he then cited them for that same

day during the evening at the Hato Rey East Police Station.

He further testified that he went to the above-mentioned police station and that when he arrived, he noticed that Díaz Matos had also arrived there. The defendant told Rosa that he was going to report him to the on-duty sergeant. Immediately, Rosa prepared an official citation and asked the defendant to sign it; the latter refused, turned around, and headed for the station door. Rosa followed him with the intention of handing him the citation, when Díaz Matos "turned around, grabbed and crumpled the citation, and called him *cabrón*,"[*] and then slapped him in the face. He emphasized that he felt offended by this word because he is a married man. He stated that police officers Cordero and Torres were present at that moment. Lastly, Rosa testified that he needed the assistance of another officer to arrest Díaz Matos and that he later told sergeant Díaz what had happened.

On cross examination, he indicated that he did not know why the prosecution had not included as witnesses or summonsed the other police officers who allegedly had seen the events.

The last witness was sergeant Díaz. He testified that police officer Rosa had informed him of what had taken place and that he did not include the other officers as witnesses because he did not deem it necessary. On cross examination, he clarified that he had not seen the incident at the police station.

---

*[Translator's note: This word may be translated as either "cuckold" or "son of a bitch."]

At the end of the trial, the jury found Carlos Díaz Matos guilty of breach of the peace.

II

Regarding breach of the peace, Penal Code sec. 260(a) provides:

> It shall be punishable by imprisonment not exceeding six (6) months or a fine not exceeding five hundred dollars, or both, in the discretion of the court for any person who willfully performs any of the following acts:
>
> (a) Disturbs the peace or quiet of any individual or neighborhood, by loud and unusual noises, tumultuous or offensive conduct or threats, insults, fights, challenges or provocations.

On various occasions we have examined and construed subsection (a) of this statute, and we have established that the punishable conduct refers to maliciously and willfully disturbing "the peace or tranquility of any community or individual by (a) loud or unusual noise; (b) tumultuous or offensive conduct . . . ; (c) threatening; (d) traducing; (e) quarreling; (f) challenging to fight; or (g) fighting." *Pueblo v. Caro González*, 110 D.P.R. 518, 521 (1980). Under the modality that concerns us, it is not necessary to prove that the act was seen by persons other than the one directly affected or that it occasioned such commotion or disorder as would stir the general tranquility of a sizeable segment of the community. *Vizcarra Castellón v. People*, 92 P.R.R. 150, 161 (1965). We reaffirm today that by protecting the interests of the individual, we are also protecting the public's interests. Nor is it

necessary to prove an actual disturbance of the peace *or even an intention to breach the peace. Id.* at 161. The sole conduct of addressing insults at another is punishable under sec. 260(a), "there being no need to go into such considerations as: whether in effect, it caused violence . . . or if the conduct could have probably caused said results." *Caro González,* 110 D.P.R. at 523-24. Furthermore, regarding the particular circumstances of this case, already in *Caro González* we recognized that an average citizen can commit the offense of breach of the peace by uttering insults and offensive words to a police officer. We held then that the police officer was worthy of the same protection enjoyed by other citizens against undue interferences with his peace and tranquility, on the sole basis of his condition as a human being.[5]

Challenging the sufficiency of the evidence, Díaz Matos alleges that "serious and essential contradictions" arise from the testimony of police officer Rosa Rodríguez and so justify the reversal of the conviction, especially since he was the only witness to testify about the facts. Appellant states that officer Rosa admitted to having changed the date of a medical certificate which indicated that he had an internal laceration in his mouth, and denied having received medical attention on the day of the events. He further argues that this same witness contradicted himself, initially claiming that a breach of

---

[5] In *Caro González,* we arrived at said conclusion even though we recognized that a greater degree of emotional control should be expected from a police officer and that a police officer should have a greater degree of tolerance toward possible confrontations to which he may be subject in different situations.

the peace was committed because the appellant uttered words in the presence of women and children, which he later denied.

The problem with this argument is that appellant is not aware of the fact that the evidence regarding the medical certificate did not seek to prove breach of the peace, but rather aggravated battery, of which offense, as we mentioned earlier, the defendant was acquitted.

Likewise, appellant's contention that the words were not uttered in the presence of women and children is also inconsequential. For subsection (a) breach of the peace to exist, there is no need to prove that the phrases were uttered in the presence, or within the hearing range, of women or children, or that these phrases were said in a loud or boisterous manner.[6] *Vizcarra Castellón v. People*, 92 P.R.R. 150 (1965); *Pueblo v. Caro González*, 110 D.P.R. 518 (1980).

The facts described show that the evidence presented by the prosecution – if believed, as it was – covers all of the elements of the offense charged and links the defendant to the events of which he was accused. As we well know, since trial courts are in a better position to weigh oral evidence, the findings of the trier below deserve the deference of the appellate courts. *Pueblo v. Miranda Ortiz*, 117 D.P.R. 188, 191 (1986); *Pueblo v. Pagán Díaz*, 111 D.P.R. 608, 621 (1981). As for the breach of the peace offense in the case at bar, the jury believed officer Rosa's version of

---

[6] This modality of breach of the peace falls under subsection (c). Puerto Rico Penal Code sec. 260(c), 33 L.P.R.A. § 4521(c).

the facts. We cannot conclude that this finding was erred. Direct evidence from a sole witness who deserves full credit is sufficient proof of any fact (Rule 10(D) of the Rules of evidence, 32 L.P.R.A. App. IV). It shall suffice that police officer Rosa stated that the defendant shouted the word "*cab---*" at him in the circumstances described, that he felt very offended, and that the jury believed him. Absent any indication of passion, prejudice, bias, or manifest error, we shall not disturb the weighing of the evidence made by the trier of fact. *Pueblo v. Chévere Heredia*, 95 J.T.S. 115, 141 D.P.R. ___ (1995); *Pueblo v. Rodríguez Román*, 91 J.T.S. 26, 128 D.P.R. ___ (1991).

III

Appellant argues that the breach of the peace statute "is unconstitutional and void on its face for reasons of overbreadth and vagueness," since, in his opinion, it does not provide an adequate warning as to what it is meant to prohibit. He argues that the conduct and actions that said statute regulates "are so general and lacking in specificity that they confuse and disorient." He further adds that the statute in question infringes on the right to freedom of expression, inasmuch as offensive language is constitutionally protected and cannot be subject to criminal action.

Appellant also contends that the offense of breach of the peace was not committed because there was no criminal intent in his act. His intention was not to insult or denigrate the police officer to whom he addressed that word, but rather said expression was more of a reaction of irritation and anger on his part. He argues that this is

evidenced by the fact that he did not know that officer Rosa was married.

Lastly, Díaz Matos points out that the word in question "does not constitute *per se* a fighting word" since it is his understanding that in Puerto Rico, to merely say that word to another person is not in itself "a highly inflammatory personal insult."

These assignments of error were not alleged nor raised by the appellant before the trial court. It is well known that when an error is raised for the first time on appeal, the same should not prosper, *Rivera Rivera v. Delgado, Warden*, 99 P.R.R. 78, 81 (1970); *People v. Del Valle*, 91 P.R.R. 167, 172 (1964), unless it deals with fundamental errors arising from the record, *People v. Torres Rosario*, 89 P.R.R. 142, 145 (1963); 34 L.P.R.A. § 1171. In order for us to consider these assignments of error, the appellant would have to reveal exceptional circumstances, which do not arise from the record and which were not brought to our attention by appellant. *People v. Soto Zaragoza*, 99 P.R.R. 739, 745 (1971). Much to the contrary, the appellant's constitutional arguments are trite and meritless.

We have previously held that it is legitimate to intervene with the expression or language of a citizen when there exists an authentic interest in safeguarding the public order; this interest is paramount when fighting words are involved. We have also held that there is no hermeneutic consideration whatsoever that prevents an interpretation to the effect that the statute in question prohibits precisely the type of language used by Díaz Matos. *Pueblo v. Caro González*, 110 D.P.R. 518 (1980). The

errors assigned did not infringe on the appellant's fundamental rights, and hence, discussion of the same for the first time on appeal is not warranted.

IV

In the last assignment of error, appellant challenges the constitutionality of the instructions given to the jury. He contends that said instructions should have informed the jury that the expression uttered by the defendant "must have tended to provoke the listener into an immediately violent reaction." He further contends that the Manual of Instructions to the Jury contains no instruction at all regarding the offense of breach of the peace.

This assignment lacks merit and is untenable. Rule 137 of the Rules of Criminal Procedure, 34 L.P.R.A. App. II, provides, insofar as it is pertinent, that:

> Neither party may assign as error any portion of the instructions or omission therein unless objection is raised thereto or additional instructions are requested before the jury retires to deliberate, stating clearly the grounds of challenge or of its request.

Only if the instructions that the court actually gave the members of the jury, or those that it failed to give, "infringe on the appellant's fundamental rights," can the latter raise this as an error on appeal despite not having opportunely objected to said instructions. *Pueblo v. Ortiz Martínez*, 116 D.P.R. 139 (1985); *Pueblo v. Rivera Carmona*, 108 D.P.R. 866 (1979); *People v. Alicea Cruz*, 100 P.R.R. 294 (1971); *People v. López Jiménez*, 96 P.R.R. 129 (1968).

The trial judge gave the following instructions with regard to the offense of breach of the peace.

> Another charge made by the prosecution is that of section 260, better known as Breach of the Peace. This section also has three modalities, and of course, the charge made against the defendant relates to one of these modalities, and section 260, which covers this situation, states that: "Breach of the Peace is committed by any person who willfully performs any of the following acts," and three acts are mentioned, but only one is applicable to him, and that is subsection A, and subsection A states the following: "Disturbs the peace or quiet of any individual or neighborhood, by loud and unusual noises, tumultuous or offensive conduct or threats, insults, fights, challenges or provocations."

The judge then warned that in order to arrive at a conviction, the evidence had to establish the guilt of the defendant beyond a reasonable doubt.

The judge thereafter asked the parties if they had any additional instructions they wanted to include, and they answered that they did not. Also, since the defendant was charged with subsection (a) of the offense in question, the judge read only said subsection. Nevertheless, he also asked the parties if they wanted all of the subsections read, and both parties said no. On more than one occasion, the trial judge gave the parties the opportunity to object or add something to the instructions given. The defense not only made no objection to said instructions, but agreed with the same for the record. A careful and unbiased analysis of the instructions that the trial court

actually gave to the members of the jury in this case[7] – in light of the evidence presented – convinces us that said instructions substantially conform to law insofar as they explained to the jury all the legal aspects pertinent to the case. The instructions did not omit any essential element of the offense. Thus, we hold that the appellant's "fundamental rights" were not impaired, and consequently, the error alleged was not committed.

For the foregoing reasons, the judgment appealed is affirmed.

It was so decreed and ordered by the Court and certified by the Chief Clerk. Justice Hernández Denton dissents without an opinion. Justice Rebollo López took no part in this decision.

Francisco R. Agrait Lladó
Chief Clerk

---

[7] A transcript of these instructions is included in the record.

Commonwealth of Puerto Rico

Supreme Court

Office of the Clerk

Bureau of Translations

P.O. Box 2392

San Juan, Puerto Rico 00902-2392

CERTIFICATE OF TRANSLATION

This is to certify that the attached translation of the *Judgment rendered by the Supreme Court of Puerto Rico, on November 10, 1995, in case No. CR-93-109, The People of Puerto Rico v. Carlos Díaz Matos (Breach of the peace, sec. 260 P.C.)*, made by the Bureau of Translations of the Supreme Court of Puerto Rico, is an accurate rendition into the English language of the original Spanish.

/s/ Olga A. Lasa Delgado
Olga A. Lasa Delgado
Director
Bureau of Translations
Supreme Court of Puerto Rico

CERTIFICATE OF THE CHIEF CLERK

I, Francisco R. Agrait-Lladó, Chief Clerk of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the annexed document is a photocopy of the official translation of the *Judgment rendered by the Supreme Court of Puerto Rico, on November 10, 1995, in case No. CR-93-109, The People of Puerto Rico v. Carlos Díaz Matos (Breach of the peace, sec. 260 P.C.)*, made by the Bureau of Translations of this Court under the authority of Act No. 87 of May 31,

1972, from the original Spanish that is under my custody in this Office.

IN WITNESS WHEREOF, at the request of the Society for Legal Assistance of Puerto Rico, I issue these presents for official use, fee-free, under my hand and the seal of this Court in San Juan, Puerto Rico, this 7th day of February, 1996.

/s/ Francisco R. Agrait-Lladó
Chief Clerk
Supreme Court of Puerto Rico
[SEAL]

Commonwealth of Puerto Rico

Supreme Court

Office of the Clerk

Bureau of Translations

P.O. Box 2392

San Juan, Puerto Rico 00902-2392

CERTIFICATE OF TRANSLATION

This is to certify that the attached translation of the *Notice issued by this Court on November 13, 1995, in case No. CR-93-0109, The People of Puerto Rico v. Díaz Matos, Carlos,* made by the Bureau of Translations of the Supreme Court of Puerto Rico, is an accurate rendition into the English language of the original Spanish.

/s/ Olga A. Lasa Delgado
Olga A. Lasa Delgado
Director
Bureau of Translations
Supreme Court of Puerto Rico

CERTIFICATE OF THE CHIEF CLERK

I, Francisco R. Agrait-Lladó, Chief Clerk of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the annexed document is a photocopy of the official translation of the *Notice issued by this Court on November 13, 1995, in case No. CR-93-0109, The People of Puerto Rico v. Díaz Matos, Carlos,* made by the Bureau of Translations of this Court under the authority of Act No. 87 of May 31, 1972, from the original Spanish that is under my custody in this office.

IN WITNESS WHEREOF, at the request of the Society for Legal Assistance of Puerto Rico, I issue these presents for official use, fee-free, under my hand and the seal of this Court in San Juan, Puerto Rico, this 9th day of February, 1996.

/s/ Francisco R. Agrait-Lladó
Chief Clerk
Supreme Court of Puerto Rico
[SEAL]

(Translation)

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

THE PEOPLE OF PUERTO RICO PETITIONER

v.

DIAZ MATOS, CARLOS RESPONDENT

CASE: CR-93-0109 Crim. Case No. KOP91M010
Criminal Appeals

Civil Action or Offense

PEREZ BONILLA, LUIS ALICIA
APARTADO 20593
RIO PIEDRAS, P.R. 00928

NOTICE

I Certify that with regard to the Notice of Appeal, the Court issued the Judgment enclosed.

Hon. Solicitor General – San Joan, PR 00902

Fairinacci García, Roberto – Ave. Hostos 846 (altos) – Hyde Park – Rio Piedras

San Juan, Puerto Rico, this 13th day of November, 1995.

FRANCISCO R. AGRAIT LLADO
CHIEF CLERK

(Sgd.) /s/ Jorge Maldonado
ASSISTANT CLERK
[SEAL]

Supreme Court, U.S.
FILED
MAY 23 1996
CLERK

No. 95-1302

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

CARLOS DIAZ-MATOS,

Petitioner,

v.

THE PEOPLE OF PUERTO RICO,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court for the Commonwealth of Puerto Rico

---

RESPONDENT'S BRIEF IN OPPOSITION

PEDRO R. PIERLUISI
Attorney General

CARLOS LUGO-FIOL
Solicitor General

EDDA SERRANO-BLASINI
Deputy Solicitor General

ROSE MARY CORCHADO-LORENT*
LORRAINE J. RIEFKOHL-GORBEA
Assistant Solicitors General

Department of Justice
P.O. Box 192
San Juan, Puerto Rico 00902
(787) 721-2924

**Counsel of Record*

May 23, 1996

PRESS OF BYRON S. ADAMS ◆ WASHINGTON, D.C. ◆ 1-800-347-8208

TABLE OF CONTENTS

PAGE

STATEMENT OF THE CASE 1-3

REASONS FOR DENYING THE PETITION 4-17

THE COURT NEED NOT REVIEW THE QUESTIONS PRESENTED, BECAUSE THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO HAS CLEARLY LIMITED SECTION 260 OF THE PENAL CODE TO FIGHTING WORDS 4

CONCLUSION 18

TABLE OF AUTHORITIES

PAGE

Constitution of the United States:

First Amendment 8, 13

Statutes:

State

Act No. 54 of August 15, 1989 (8 L.P.R.A. sec. 628) . 1, 14

Constitution of the Commonwealth of Puerto Rico
Article 2, Section 8 5

Article II, Section 11 16

Puerto Rico Penal Code of 1937
Sec. 367, 370 (33 L.P.R.A. secs. 1439 and 1441) . . 6

Puerto Rico Penal Code of 1974
Sec. 256 (33 L.P.R.A. sec. 4491) 2

Sec. 260 (33 L.P.R.A. sec. 4521) . . . . . *passim*

Cases:

Federal

Chaplinsky v. New Hampshire, 315 U.S. 568, (1942) 8, 9, 10

Cohen v. California, 403 U.S. 15 (1971) 8, 10

Edwards v. South Carolina, 372 U.S. 229, (1963) . . . 10

Feiner v. New York, 340 U.S. 315, (1951) 10

Hess v. Indiana, 414 U.S. 105 (1973) 10

Gooding v. Wilson, 405 U.S. 518, (1972) 8, 11

Table of Authorities continued

PAGE

Griffin v. United States, 502 U.S. __, 116 L.ed 2d 371 (1991) 15

Lewis v. City of New Orleans, 408 U.S. 913 (1972) 8, 11

R.A.V. vs. City of St. Paul, 505 U. S. __, 120 L.ed 2d 305, 1992 11

Stromberg v. California, 283 U.S. 359 (1931) 15

Terminiello v. Chicago, 337 U.S. 1, (1949) 10, 17

44 Liquormart Inc. v. Rhode Island, n. 20 - No. 94-1140; 64 USLW 4313 (May 13, 1996) 11

State

Commonwealth of Puerto Rico v. Hermandad de Empleados, 104 D.P.R. 436, 4 Official Translation 605 (1975) . 5

Negrón v. Orozco Rivera, 113 D.P.R. 712, 13 Official Translations 921 (1983) 12

People v. Arcelay Galán, 102 D.P.R. 409, 2 Official Translations 512 (1974) 5

People v. Caro González, 110 D.P.R. 518, 10 Official Translations 667 (1980) . . . . . *passim*

People v. de León Martínez, 93 JTS 20, Op. February13, (1993) 5

People v. Figueroa Navarro, 104 D.P.R. 721, 4 Official Translations 1016 (1976) 5

People v. Kortright, 70 P.R.R. 376, (1949) 6

People v. Matos, 43 P.R.R. 393, (1932) 7

Table of Authorities continued

PAGE

People v. Medina, 58 P.R.R. 924, (1941) 5

People v. Ortiz González, 111 D.P.R. 408, 11 Official Translations 503 (1981) 12, 15

People v. Pacheco, 48 P.R.R. 584, (1935) 6

People v. Pillot, 29 P.R.R. 826 (1921) 7

People v. Ruiz, 29 P.R.R. 68 (1921) 7

People v. Ways, 29 P.R.R. 311 (1921) 6

Ramos v. District Court, 73 P.R.R. 399, (1952) 7

Vizcarra Castellón v. People, 92 P.R.R. 150 (1965) . . . 7

Texts:

Diccionario de la Lengua Española, (Dictionary of the Spanish Language), Real Academia Española, Editorial Espasa-Calpe, Madrid, page 260 4

García Márquez, Gabriel, *One Hundred Years of Solitude* 5

R. Emmanuelli-Jiménez, Análisis Constitucional del Delito de Alteración a la Paz- Articulo 260 del Código Penal de Puerto Rico, (Constitutional Analysis of the Puerto Rico Breach of Peace Statute-Section 260 of the Puerto Rico Penal Code), 55 Rev. Jur. U.P.R. 587,1987 13

Rotunda & Nowak, Treatise on Constitutional Law: Substance and Procedure,Sec. 20.37 (2d ed. 1992) . 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-1302

CARLOS DIAZ-MATOS,

Petitioner,

v.

THE PEOPLE OF PUERTO RICO,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court for the Commonwealth of Puerto Rico

---

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, the People of Puerto Rico, respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the unpublished judgment issued by the Supreme Court of the Commonwealth of Puerto Rico in this case.

STATEMENT OF THE CASE

Petitioner, Carlos Diaz Matos, was indicted in the Superior Court of Puerto Rico, San Juan Part, for the following offenses: Sec. 2.8 of the Domestic Violence Act,[1]

---

[1] Act No. 54 of August 15, 1989 (8 L.P.R.A. sec. 628).

breach of the peace,[2] use of violence and intimidation against public authority,[3] and aggravated battery. Said events took place at the Hato Rey East Police Station on August 17, 1991.

Petitioner was tried by jury, but the presiding judge peremptorily acquitted the defendant of the Domestic Violence charge. The jury acquitted him of the charges of using violence and intimidation against public authority and aggravated battery, but rendered a guilty verdict on the breach of the peace offense. He was sentenced to pay a $250.00 fine plus costs or to serve one day in jail for every $5.00 left unpaid.

On May 7, 1994, petitioner filed an appeal to the Puerto Rico Supreme Court alleging that the evidence brought against him was not sufficient at law to establish his guilt beyond a reasonable doubt. Although his contentions about the unconstitutionality of the statute and flawed jury instructions were not presented before the trial court, petitioner also alleged that Section 260 of the Puerto Rico Penal Code suffers serious constitutional problems and questioned the instructions given to the jury.

On November 10, 1995 the Puerto Rico Supreme Court affirmed the judgment. After reviewing the evidence presented by the prosecution,[4] the court held that it covered

---

[2] Puerto Rico Penal Code Sec. 260 (33 L.P.R.A. sec. 4521).

[3] Puerto Rico Penal Code Sec. 256 (33 L.P.R.A. sec. 4491).

[4] The facts as summarized in the judgment of the Supreme Court of the Commonwealth of Puerto Rico represent a more complete version of the evidence presented against the petitioner. App. pages 2-4.

all of the elements of the offense charged and linked the defendant to the events of which he was accused.

Regarding the constitutional issues raised by the petitioner, the court held that discussion of the assigned errors was not warranted for the first time on appeal because they did not infringe on appellant's fundamental rights. Citing, *People v. Caro González*, 110 D.P.R. 518, 10 Official Translations 667 (1980) the court asserted that it was legitimate to intervene with the expression or language of a citizen were there exists an authentic interest in safeguarding the public order. The court concluded "that there is no hermeneutic consideration whatsoever that prevents an interpretation to the effect that the statute in question prohibits precisely the type of language used by Díaz Matos." (App. p.9).

As to the jury instructions the court noted that the trial judge, in more than one occasion, gave the parties the opportunity to object or add to those instructions. The defense, for the record, not only made no objections but agreed with the instructions given. Consequently, the court concluded that "a careful and unbiased analysis of the instructions convinces us that said instructions substantially conform to law insofar as they explained to the jury all the legal aspects pertinent to the case." App. 12.

REASONS FOR DENYING THE PETITION

THE COURT NEED NOT REVIEW THE QUESTIONS PRESENTED, BECAUSE THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO HAS CLEARLY LIMITED SECTION 260 OF THE PENAL CODE TO THE USE OF FIGHTING WORDS.

To argue his case, petitioner conveniently translates the Spanish word "cabrón" as "son of a bitch". This translation is inaccurate. The word as used in Puerto Rico means a lot more. To comprehend the real meaning of the word it is necessary to understand the culture and particular idiosyncrasy of the people of Puerto Rico. Puerto Ricans have a strong Spanish tradition, which has established strong roles for males in society.

In Puerto Rico, the word "cabrón" is a very offensive insult, capable of provoking a violent reaction. Every person, police officer or not, is aware of its meaning and implications. It is the worst insult that can be uttered against a Puerto Rican male since the generally accepted meaning of the word is "he who consents to his wife's adultery".[5] It is considered an attack upon a man's virility or manhood since it implies that his wife is having an affair, of which he knows but does nothing about it.

The word "cabrón", however, is not a prohibited word as alleged by petitioner. It can be lawfully used in different

---

[5] Diccionario de la Lengua Española, (Dictionary of the Spanish Language), Real Academia Española, Editorial Espasa-Calpe, Madrid, page 260.

situations, as in literature[6] or casually. As with any other fighting word, only when it is used under certain given circumstances, does it constitute the conduct punishable under Section 260. First, the word must be uttered as a direct insult to a person who was previously at peace. *People v. de León Martínez*, Opinion dated February 13,(1993),93 J.T.S. 20.[7] It is essential that the vulgar or offensive language be heard by the person to whom it is addressed. *People v. Medina*, 58 P.R.R. 924 (1941). Article 2 Section 8 of the Constitution of the Commonwealth of Puerto Rico establishes that "every person has the right to the protection of law against abusive attacks on his honor, reputation and private or family life". This Section guarantees the protection of public and individual peace.[8] *People v. Arcelay Galán*, 102 D.R.R. 409, 2 Official Translation 512 (1974). Public peace means the sense of serenity and tranquility, so necessary to one's comfort that every person feels under the protection of law; a breach of peace is an invasion of the protection that the law thus affords. *People v. Figueroa Navarro*, 104 D.R.R. 721, 4 Official Translations 1016 (1976).

---

[6] See, García Márquez, Gabriel, *One Hundred Years of Solitude*.

[7] Unfortunately, this opinion has not yet been published in the English language. An expedited translation of the opinion has been requested from the Office of Translations of the Supreme Court of Puerto Rico. As soon as the translation becomes available, it will be forwarded to this Honorable Court.

[8] For a brief history of this section of the Constitution see, *Commonwealth of Puerto Rico v. Hermandad de Empleados*, 104 D.P.R. 436, 4 Official Translation 605 (1975).

The present Section 260 of the Penal Code derived from Sections 368 and 370 of the Penal Code of 1937,[9] and is divided in three modalities. Subsection A refers to the malicious and voluntary disturbance of "the peace and quiet of any individual or neighborhood, by loud and unusual noises, tumultuous,[10] or offensive conduct or threats, insults, fights, challenges, and provocations".Most of the acts proscribed in section 260, such as loud and unusual noises, threats or fights need no further commentary. Others have been the object of interpretation by the Supreme Court of the Commonwealth of Puerto Rico.

In *People v. Ways*, 29 P.R.R. 311 (1921), the term "offensive" was defined as "anything that causes displeasure, gives pain or unpleasant sensations".[11] The term "insults" (then traducing) was defined as "to misrepresent, hold up or expose to ridicule or calumny; defame; calumniate, vilify". Also "... to expose wrongfully to contempt or shame...". "Insult or opprobrium cast at a person. Actions or circumstances which causes afford or disgrace" and "to speak evilly of a person or thing classifying him or it as vicious or disgraceful".[12]

Early interpretation of the section suggested that the act must be done in public in order to constitute the offense. In *People v. Kortright, 70* P.R.R. 376 (1949), the court

---

[9] 33 L.P.R.A. secs. 1439 and 1441.

[10] A tumultuous action, as used in this section is a breach of the peace within the statutory definition of riot. *People v. Pacheco*, 48 P.R.R. 584 (1935).

[11] *Id.* at page 314

[12] *Id.* at pages 315-316.

concluded that, under the circumstances, words uttered even in a loud tone and a little excitedly were insufficient to consider that the offense was committed. In *People v. Ruiz,* 29 P.R.R. 68 (1921), where a vulgar epithet was uttered against a judge, the court concluded that the insult was not offered in a loud and boisterous manner. See, also, *People v. Pillot,* 29 P.R.R. 826 (1921), where the court concluded that the complaint did not charge the offense of breach of the peace by vituperations and threats.

In *Ramos v. District Court,* 73 P.R.R. 399 (1952), the court extended the scope of this statute, so that the act of peeping through a window at the time a husband and wife were about to go to bed was an offensive conduct within the phrase disturbing the peace or quiet of a person or several persons.

Later, in *Vizcarra Castellón v. People,* 92 P.R.R. 150 (1965), the Court concluded that the use of vile, abusive and indecent language over the telephone constituted a breach of the peace. It was not necessary that the act be seen or the words heard by more than one person in addition to those directly affected, or that it cause a disorder in a sizable segment of the community.

In *People v. Caro González, supra,* the Supreme Court of the Commonwealth of Puerto Rico finally decided a question it had left unanswered in *People v. Matos,* 43 P.R.R. 393 (1932), to wit, whether a police officer is protected by section 260(a)of the Penal Code. The court analyzed its previous decisions and concluded that "neither its text [Section 260] nor its case history contains discernible criteria to determine the point where the conduct or offensive or

insulting language uttered by a person to another is near to or will cause an event which in effect, will disturb the peace and public order."[13] The court took into consideration the latest cases decided by this Court on the First Amendment of the United States Constitution, which guarantees that protected expression be not punished.

Adopting the doctrines set forth in *Chaplinsky v. New Hampshire,* 315 U.S. 568 (1942); *Cohen v. California,* 403 U.S. 15 (1971); *Gooding v. Wilson,* 405 U.S. 518 (1972) and *Lewis v. City of New Orleans,* 408 U.S. 913 (1972), the court concluded that:

> We resolve that the application of modality (a) of art. 260 of the Penal Code, exactly as it has been construed, is *not* totally excluded when the subject is a policeman. However, among all the circumstances which should be considered of the crucial determination of whether the words constitute "fighting words," attention must be paid to the fact that one should always expect that a policeman exercise a greater degree of control over his emotions, showing a high degree of tolerance when faced with possible insults that may be addressed to him in diverse situations.[14]

Therefore, the Court sanctioned the conduct and language addressed by defendant to the police officer, adding that "the

---

[13] *Id.* at page 676

[14] *Id.* at pages 681-682

words uttered within the meaning attributed to them by the general idiosyncrasy of our people, are by their own nature, rather than annoying, offensive, and irritating, capable of provoking a violent reaction (fighting) and consequently a breach of the peace."[15]

In conclusion, section 260 of the Penal Code does not regulate spoken words, only certain types of conduct. "It is a better analysis to regard fighting words as within the ambit of action rather that speech because there is no intellectual content to be conveyed to the listener, but merely a provocation, emotional message intended and likely to incite an *immediate* violent response".[16] Thus, the Supreme Court of Puerto Rico has consistently incorporated to our statute the interpretation of this Court regarding the scope of the constitutional right of freedom of expression.

In *Chaplinsky v. New Hampshire, supra*, this Court established that the state may intervene with the citizen's utterance or language when there is a legitimate interest or purpose of safeguarding the public order. When fighting words are involved, the interest of the state is predominant. Fighting words were defined as "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace". These are not constitutionally protected because their "slight social value as a step to truth that any

---

[15] *Id.*

[16] Rotunda & Novak, *Treatise on Constitutional Law: Substance and Procedure*, sec. 20.37 (2d ed. 1992).

benefit that may be derived from them is clearly outweighed by the social interest in order and morality."[17]

The decisions that followed *Chaplinsky* reflected a desire of the Court to limit the broad implications of the outlined doctrine and recognized the potential social value in statements that might come under the initial definition of fighting words. *Terminiello v. Chicago,* 337 U.S. 1(1949); *Feiner v. New York,* 340 U.S. 315, (1951); *Edwards v. South Carolina,* 372 U.S. 229 (1963). In these cases, contrary to *Chaplinsky*, the insults were not face-to-face confrontations, but harangues not focused on the audience, nor was the audience compelled to listen to them. This Court emphasized that even provocative speech is protected against censorship unless the state can prove that such words will cause an immediate disruption.

Cohen v. California, supra, provides an important affirmation for this distinction. Even though an offensive expletive was used, this does not detract from the protection afforded to speech. The offensive word was not a direct personal insult specifically directed to a particular person nor was the State exercising its police power "to prevent a speaker from intentionally provoking a given group to a hostile reaction".[18] In *Hess v. Indiana*, 414 U.S. 105 (1973), the Court reversed the conviction because the words used were not directed to a particular person or group, and there was no evidence of an imminent violent reaction.

---

[17] *Id.* at 572

[18] 403 U.S. at 20

In *Gooding v. Wilson*, *supra*, this Honorable Court avoided overruling *Chaplinsky* by employing the vagueness and overbreadth standard to overturn the statute. After conducting its own examination of the state case law, this Court held that the state decisions did not limit the statute "to words that have a direct tendency to cause acts of violence by the person to whom individually, the remark is addressed."[19] In *Lewis v. New Orleans, supra,* the statute was vague and overbroad.[20] Unlike section 260, the overturned statute prohibited the use of offensive or opprobrious language toward a police officer while on duty. Any word addressed to a police officer in an offensive or opprobrious manner constituted an offense. Thus the statute was clearly overbroad.

The most important case regarding fighting words is *R.A.V. vs. City of St. Paul*, 505 U. S. ___, 120 L.ed 2d 305,(1992).[21] This Court held that a state can not make mere words a crime because they are politically incorrect, or because the state wishes to drive certain ideas from the marketplace. Even when prohibiting "fighting words", the state may not engage in an effort to suppress unpopular or

---

[19] *Id.* at 524

[20] The statute in question read as follows:
"It shall be unlawful and a breach of the peace for any person wantonly to curse or revile or to used obscene or opprobrious language toward or with reference to any member of the city police while in the actual performance of his duty".

[21] See, also; *44 Liquormart Inc. v. Rhode Island*, n. 20 - No. 94-1140; 64 USLW 4313 (May 13, 1996).

even offensive ideas. The state may forbid "fighting words", as long as it does so in a viewpoint-neutral manner.

Petitioner cites *Negrón v. Orozco Rivera*, 113 D.P.R. 712, 13 Official Translations 921 (1983), to argue that use of the word "cabrón" had no relation to the death of a person. The incident, as stated in notes 1 and 3 of the opinion of the court, started when police officer Orozco-Rivera and Negrón had an argument on an Aguas Buenas road. Both used obscene language and Negrón called Orozco-Rivera "cabrón". Moments later Negrón went to the Police Station to lodge a complaint and at that instant Orozco-Rivera also arrived expressing that he had a problem with an individual that called him "cabrón". He was sent to the report room while Negrón was to wait outside with officer Pérez. When Orozco called Pérez, Negrón took advantage of the opportunity and called Orozco a bully. Orozco, then, using his revolver fired several times at Negrón. Obviously, the events that culminated in the death of Negrón started when he called Orozco-Rivera a "cabrón". This is contrary to petitioner's assertion that the police officer shot the person that called him "cabrón" several days later. The events took place the same day and were closely related.

In *People v. Ortíz González*, 111 D.P.R. 408, 11 Official Translations 503 (1981), the Supreme Court of Puerto Rico stated that the fact the victim, a feeble alcoholic, insulted the murderer by calling him a "cabrón" several days before the incident that culminated in the tragedy, cannot be considered a provocation capable of arousing heat of passion to justify a manslaughter verdict. The court stated that the "concepts of dignity and honor of a person is not affected by mere insults

from a feeble alcoholic".[22] This holding is not a departure from *Caro González, supra*. It reaffirms that the word "cabrón" is a fighting word, but in this particular case it was not enough provocation to justify a murder.

Petitioner affirms that the breach of peace statute is annually applied to at least five thousand citizens of the United States. This asseveration is flawed. The figures provided by the petitioner were obtained from an article published by the University of Puerto Rico Law Review.[23] These figures were in turn obtained from the Annual Reports of the Judicial Branch of Puerto Rico and refer to the numbers of cases pending during that fiscal year, not to the number of arrests made by the police. Furthermore, the statistics are extremely misleading since they refer to the three modalities of conduct proscribed under Section 260 of the Penal Code. These numbers may include the use of a firearm in a public street (subsection B) or disturbing the peace or quiet of a neighborhood, by loud and unusual voices, (Subsection A). Neither of these offenses has any relation with the constitutional rights under the First Amendment that the petitioner claims were violated. The figures cannot reveal the number of cases that arise from the use of the word "cabrón" or any other fighting word. For that reason those numbers should not be used to affirm that the breach of peace

---

[22] *Id.* at page 513.

[23] R. Emmanuelli-Jiménez, *Análisis Constitucional del Delito de Alteración a la Paz- Articulo 260 del Código Penal de Puerto Rico,* (Constitutional Analysis of the Puerto Rico Breach of Peace Statute-Section 260 of the Puerto Rico Penal Code), 55 Rev. Jur. U.P.R. 587, 1987.

statute is widely applied in the Commonwealth of Puerto Rico.

The figures cited by petitioner for fiscal year 1989-90 refer to the number of cases pending during that year. But petitioner did not mention that during that year, of the 9,644 cases, 5,093 were dismissed; that the number of convictions was 1,809 of which 1,327 were by guilty pleas, and that 768 were acquitted. The high number of dismissals may be due in part to the fact that violations of Section 260 usually occur during emotional outbursts. The person files a complaint but later changes his mind and withdraws it. Another reason for the high number of dismissals could be the fact that, prior to the enactment of the Domestic Violence Act in 1989, Section 260 of the Penal Code was the usual legal vehicle to indict persons for such conduct. Domestic disputes disturb the peace and quiet of persons and neighborhoods by loud and unusual noises, insults, fights, threats and provocations. This conduct now mainly falls into the language of the Domestic Violence Act. The figures show that there has been a decline in the number of cases presented for violation of Section 260 of the Penal Code.[24]

---

[24] According to the Annual Reports of the Judicial Branch of Puerto Rico the figures are as follows:

Fiscal Year	Total Cases	Convictions	Acquittals	Dismissals
1990-91	7,822	1,357	645	3,992
1991-92	7,536	1,387	649	3,846
1992-93	7,801	1,306	571	4,031
1993-94	7,902	1,368	628	4,229
1994-95	6,625	1,291	309	4,324

Petitioner, also, alleges that his conviction must be set aside because the instructions given to the jury were framed on the language of the breach-of-peace statute. Since he did not challenge the instructions during trial, he argues that the Commonwealth Supreme Court should have applied the doctrine established in *Stromberg v. California*, 283 U.S. 359(1931). Said doctrine is clearly inapplicable in the present case. In *Griffin v. United States*, 502 U.S. __, 116 L.ed 2d 371, 378 (1991), this Court, citing *Stromberg* asserted that:

> This language, and the holding of Stromberg, do not necessarily stand for anything more than the principle that, where a provision of the Constitution forbids conviction on a particular ground, the constitutional guarantee is violated by a general verdict that may have rested on that ground.

In the present case, petitioner was indicted for using a fighting word. The indictment clearly established that the word used by petitioner was "cabrón". The jury was instructed that section 260 of the Penal Code has three modalities, and that the charges brought against the petitioner related to one of these modalities. Then the trial judge read only subsection A of section 260.[25]

---

[25] To determine the correctness or incorrectness of the instructions given to the jury , they should be considered as a whole, not in an isolated manner. *People v. Ortíz González, supra.*

The trial judge then warned the jury that in order to find the defendant guilty of violating section 260, where a word was used against a police officer, the evidence had to establish guilt beyond a reasonable doubt. Later the trial judge asked both the prosecution and the defense attorneys whether they wanted any additional instructions or if they wanted all of the subsections read. The answer to both requests was negative.

On appeal, the petitioner has challenged the constitutionality of the instructions given to the jury, alleging that the same should have included a reference to the effect that the insult or fighting word used by the defendant should have provoked a violent reaction. He also contented that the Handbook of Jury Instructions contained no instruction regarding the breach of peace offense.[26] After a brief analysis, both arguments were rejected by the Supreme Court, concluding that the instructions given to the jury substantially conform to law, and no fundamental rights of the appellant had been impaired.

The jury, given the instructions, had only two alternatives. If the jury found that the prosecutor had proven beyond a reasonable doubt that the defendant had called the police officer "cabrón" as he handed him the citation, then the verdict was guilty. If not, they had to acquit the

---

[26] Section 260 of the Penal Code is classified as a misdemeanor. Article II, Section 11 of the Constitution of the Commonwealth of Puerto Rico established that: "In all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine".

defendant. Contrary to the *Terminiello v. Chicago*, *supra,* case, the petitioner never raised any constitutional question during trial. Only on appeal did he start to challenge the constitutionality of the statute. In the *Terminiello* case the defendant did not question the instructions given to the jury but challenged the constitutionality of the whole statute as construed and applied to him. In this case, defendant failed to do so.

In summary, it is most respectfully submitted that petitioner is not entitled as a matter of law to the remedy he seeks before this Court. Section 260 is not a legislative censorship upon certain types of expression. It is instead a penal statute that sanctions the use of certain words to disturb the peace of others. Even though the word "cabrón" is perhaps the worst insult that may be uttered to a Puerto Rican male, and its used as a fighting word is likely to provoke an immediate, violent reaction, the statute does not prohibit all use of that word. It only prohibits the act of disturbing the peace of another person by its use. In this case, the word was not used casually or as a literary resource, but was overtly directed to a police officer to offend him. The fact that the police officer controlled himself and did not react violently should not be used to excuse petitioner, and much less should be used to invalidate a statute which, as has been shown, restricts speech no more than strictly necessary to further the overriding state interest of preserving order and protecting people from affronts and attacks upon their reputation.

CONCLUSION

For the reasons stated in this brief, the petition for certiorari should be denied.

Respectfully Submitted,

PEDRO R. PIERLUISI
Attorney General

CARLOS LUGO-FIOL
Solicitor General

EDDA SERRANO-BLASINI
Deputy Solicitor General

ROSE MARY CORCHADO-LORENT*
LORRAINE J. RIEFKOHL GORBEA
Assistant Solicitors General

Department of Justice
P.O. Box 192
San Juan, Puerto Rico 00902
(787) 721-2924

**Counsel of Record*

MAY 23, 1996